

Appeal Decision

Hearing held on 10 February 2021

Site visit made on 12 February 2021

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2021

Appeal Refs: APP/Z3825/C/19/3224705

Land at The Granary, Westmill Farm, Shoreham Road, Small Dole, Henfield, West Sussex BN5 9YG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Robert Oram against a notice issued by Horsham District Council.
 - The notice was issued on 14 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a new building (marked as A on the attached plan) and its use for residential purposes.
 - The requirements of the notice are:
 - 5.1.1 Permanently cease the use of the extended part of the building (marked as A on the attached plan) for residential purposes.
 - 5.1.2 Permanently remove from the extended part of the building (marked as A on the attached plan) all residential fixtures and fittings.
 - 5.1.3 Permanently remove the extended part of the building (marked as A on the attached plan).
 - 5.1.4 Make good the damage resulting from the taking of step 3.
 - 5.1.5 Permanently remove the cladding from the southern, eastern and western elevation of the building marked as B on the attached plan.
 - 5.1.6 Permanently remove the patio area (marked as C on the attached plan) within the agricultural field to the north of the building marked as B on the attached plan.
 - The period for compliance with the requirements is six (6) calendar months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. The Council's suggested amendments to the enforcement notice, as set out in its letter to the appellant, dated 2 December 2019, are accepted in their entirety, and the notice, as originally issued, is corrected in the terms set out below:

The allegation is deleted and substituted with the following wording:

"Without planning permission, alterations and extension to the building shown outlined in red on the attached plan."

The required steps, nos 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5 and 5.1.6, are all deleted, and are replaced with the following requirements:

5.1.1 Demolish the extension shown hatched green on the attached plan, and remove the resulting rubble from the land; and

5.1.2 Following compliance with step 5.1.1, make good the resulting damage to the building shown hatched blue on the attached plan.

2. The appeal on ground (c) does not succeed.
3. Subject to the said corrections the enforcement notice is quashed as planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the alterations and extension to the building shown outlined in red, the extent of which is outlined in green, on the attached plan, subject to the following condition:
 - 1) Within 3 months of the date of this permission, details of the means of foul and surface water disposal shall, along with a timetable for the implementation of any necessary works, be submitted to the local planning authority for approval in writing.

Any works required to be carried out by way of the approved scheme shall be implemented in full, in accordance with the agreed timetable, thereafter.

Background

4. The development subject to the enforcement notice is distanced from the site's main farmhouse. 'The Granary', as termed, was a former brick built agricultural building, since refurbished and now referred to by the Council as 'Building B'. An adjacent former cowshed has been rebuilt and now interlocks with and effectively extends this building. The extension itself is referred to as 'Building A'.
5. Following a complaint received in February 2018 that the single building created was being used as a dwellinghouse the Council initiated investigations. Subsequently, in February 2019, the Council saw it expedient to issue an enforcement notice, in the form set out above.

Matters concerning the Enforcement Notice

6. Although the allegation in the enforcement notice, as issued, refers only to *"the unauthorised erection of a new building ('A')"* the stated requirements go beyond this, targeting also the cladding on 'Building B' and also a patio area ('C'), marked on the attached plan.
7. During the appeal process, on 23 October 2019, the Council sent an e-mail to the appellant's agent indicating that it had revised its understanding of the planning position. An extract from the e-mail is reproduced below:

"In brief, the Council's case is that the extension is not immune from enforcement action because it was not substantially finished as a building operation until late 2015/early 2016 and not occupied until mid 2016 (on your client's own evidence),"

which is within the 4 years from the date the enforcement notice was issued on 14.02.19.

"For the avoidance of doubt it is accepted the main element (former cowshed) is immune from enforcement action under the 4 year rule, but not the extension/rebuild of the former milking parlour for the reasons stated above."

8. In other words, on the basis of the above, the Council was clearly turning its full attention to Building A (which, for clarity, I shall hereafter refer to as "the extension") and, on 2 December 2019, apparently in response to the appellant's appeal statement, the Council sent a letter to the appellant's agent with *"suggested amendments of the wording and the EN plan"*. Rather than referring to Buildings A and B the revised plan shows Building B as hatched blue and Building A as hatched green. Only the area hatched green would now be targeted by the enforcement notice. In fact, the suggested amendments would be limited to requiring for the demolition of *"the extension shown hatched green"*, removing the resulting rubble from the land and making good any resulting damage to the building shown hatched blue.
9. In asserting that these suggested amendments would not be prejudicial to the appellant the Council is inviting me to decide whether or not the enforcement notice, in its revised form, should be accepted. In light of the evidence as to the planning history outlined by both sides at the Hearing I am inclined to accept that the Council's above assertion regarding Building B holds weight. Accordingly, I see no justification for the notice's requirements 5.1.5 and 5.1.6, neither of which directly relates to the extension. Further, I also have concerns that the notice, although alleging unauthorised operational development in its title, then concentrates, particularly in its first requirement, on the cessation of extension's residential use. Were I to refuse to accept the amendments then the enforcement notice, as issued would, in the first instance, require considerable correction if not, run the risk of being termed invalid.
10. I do consider that the amendments put the notice on a better footing and am inclined to accept them. However, given the circumstances, I must explore what comprises the planning unit in this instance and, as a consequence, come to a conclusion on the actual planning position.

The planning position

11. The Council, in its Statement of Case, has seemingly back-tracked from its earlier position at the time of the October 2019 e-mail referred to above, saying instead, in paragraph 6.10, that *"...Building B may or may not be immune from enforcement action under s171B(2) of the 1990 Act..."* This confirms my view that the existence of Building B represents a significant difficulty for the Council in this case, and how this has clear implications regarding the degree of planning control still available here to the Council. In illustration, I noted from the Hearing a certain hesitancy to discuss this matter which I took as an indication that the Council felt that this issue would compromise its case. In essence, though, it seems to me that the amended allegation which states *"Without planning permission, alterations and extension to the building..."* without requiring removal of *"the building"* in its entirety is effectively confirming Building B's immunity.

12. In terms of the planning unit the leading case for the determination of such is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes. The concept of physical and functional separation is the key. Lawfulness in planning terms aside, Building B and its extension are clearly integrated and are now as one; comprising a single entity.
13. From my findings I find that the planning position is as follows. Firstly, during the Hearing the appellant somewhat side-stepped the matter of whether, given the Council's position regarding Building B, an application should have best been made under s191 seeking a lawful development certificate regarding the existence and use of this building. In the circumstances Building B (or that hatched in green on the amended plan) remains in situ and in use for residential purposes, but without any official documentation to confirm its lawfulness in this regard.
14. Secondly, no new planning unit has been created by the creation of the extension and this I find consistent with the relevant plan prepared by the Council and attached to the enforcement notice whereby the building as a whole is ringed red. The area of The Granary, West Mill Farm covered by the enforcement notice thereby represents the footprint of a single planning unit used as an independent unit of residential accommodation.
15. Given that only the extension to Building B is targeted, the case at appeal is narrowed down to whether or not the extension to Building B is immune from planning control and, if not, whether planning permission should be granted for the extension's retention.
16. In the judgement of *R(oao) Sumner SSCLG* [2010] EWHC 372 (Admin); [2010] JPL 104 ENs the Inspector had found the building to be lawful on the four year rule, but the use had begun within the past ten years. The Court rejected the claim that the immunity of the building should carry immunity for the intended use as it could not be ancillary to the operations. S75(3) of the 1990 Act was not relevant as it relates to where planning permission is granted for a building and the use is not specified. A distinction is drawn and intended to be drawn between change of use and operational development that is entirely consistent with the Act.
17. Accordingly, were I to find that the extension did enjoy immunity from planning control that would not, in this instance, fully authorise its use for residential means.

The Appeal on Ground (c)

18. In view of my decision to accept the Council's suggested amendments to the enforcement notice this appeal ground falls away as it was concerned with the cladding to Building B and also the creation of an adjacent patio area. Accordingly, there is no need for me to consider these particular matters further.

The appeal on Ground (d)

19. On this ground the Appellant must successfully demonstrate, on the balance of probability, that the breach of control alleged in the notice commenced four years

before the date of the issue of the enforcement notice, ie prior to 14 February 2015 (hereinafter referred to as "*the material date*") and has remained in situ since.

20. In support of the appellant's case Christine Holland has made a declaration, dated 19 June 2020, which indicates that she took occupation of 'Building B' in October 2013, and began using the extension for storage purposes in early 2014. By late 2014 she indicates that, with the extension then providing habitable living accommodation, she took full occupation of Building B and its extension.
21. The Council's case is that the extension's residential use did not commence until after April 2015 and, to this end, refers to an aerial photograph dated 22 April 2015 which shows the extension without any roof covering. This contrasts markedly with a subsequent aerial photograph dated 9 October 2015 whereby the extension is clearly roofed, the outline of which is consistent with the physical structure which I observed at my site visit.
22. At the Hearing the appellant confirmed that certain dates he had been given when first preparing the appeal were in error and paragraph 4.2 of his Statement of Case, which said that, by the beginning of 2014, both Buildings A and B were being used jointly as a dwellinghouse was not correct. I accept that these dates have since been revised. The appellant still, though, needs to convincingly demonstrate that the extension was substantially complete by the material date in February 2015.
23. Most importantly, for the immunity argument to succeed the appellant's evidence needs to be both precise and unambiguous. The appellant, at the Hearing, reiterated that the link between the Building B and the extension was completed in 2013/2014. Certain incidental evidence, including declarations from both the appellant and his sister, and also some paperwork from DG Welding (Brighton) Ltd and Brickbond Sussex Ltd have been submitted in support. The Council, for its part, maintained its belief that the extension, and the development as a whole, was not substantially complete until between April 2015 and October that year, with particular reference to the evidential fact from the said aerial photograph.
24. Weighing up all material I am not sufficiently convinced as to the consistency and clarity of the appellant's case that the building had been completed prior to April 2015 and was only being re-roofed at the time due to accidental damage caused. On the balance of probabilities I find that the Council's evidence on this matter is the most credible and I am not satisfied that substantial completion had occurred by the material date. Accordingly, planning permission is required for the extension's lawful retention.
25. The appeal on ground (d) therefore fails.

The appeal on Ground (a) and the deemed planning application (DPA)

Main Issue

26. Given my findings as to the development in its entirety, and the fact that the use of the main building is not a consideration in this appeal the main issue is limited only to the character and appearance of the extension built and its effect on both the building as a whole and the surrounding area. The extension interlocks with

the lengthy stretch of Building B situated behind also a higher ridge height and accommodates habitable floor area within its roofspace, lit by velux windows.

Reasons

27. The extension and all but one of Building B's elevations are timber clad, and the roof tiles are matching which gives the appearance of a single building or, moreover, a cohesive development. A grassed area been laid out to the front of the building.
28. At the Hearing Mr Hawks requested that, when visiting the site, I observe the development from the field to the north. The north facing elevation is the only part of Building B which is brick-faced and, although a series of windows and French doors have been installed within the facade, this is the part of dwelling which still reminds of Building B's former agricultural use. Whilst I noted this at my site visit, the request was to miss the point as the northern section of the dwelling is not targeted by the Council's amendments. Instead, only the extension is being isolated as one part of the development. Nonetheless, even were the extension to be removed both parties, when questioned, were in agreement that Building B could potentially function as a dwelling in its own right.
29. Given my findings as to the extension's appearance and its physical relationship to the main part of the dwelling I face the question as to what harm the extension is actually causing to the character of its immediate surroundings. The enforcement notice says that the extension has created an overly domesticated appearance from what was previously a utilitarian building within a rural setting. The residential re-use of redundant agricultural buildings is now commonplace throughout the country and although this building has a modern appearance, when taking into account its particular setting I see no good reason why the extension to the building should not be granted planning permission, retrospectively.
30. I conclude that the development is not harmful to the character and appearance of the building in its entirety nor the surrounding area, and there would be no material conflict with the design objectives of policy 32 and the principles for new development stated in policy 33 of the Horsham District Planning Framework. Neither would the development materially conflict with the design standards for new development as set out in policy 12 of the Henfield Neighbourhood Plan (2017-2031).
31. In granting planning permission for the extension a distinction must be now be drawn between the approved development and a building's immunity status relating to the *Sumner* judgement. Section 75(2) of the 1990 Act as amended provides that where planning permission is granted for the erection of a building the grant of permission may specify the purposes for which the building may be used. However s75(3) continues, stating that if no purpose is so specified the permission shall be construed as including permission to use the building for which the building may be used or, reasonably, for the purpose for which it was designed. This is the case with the extension enforced against but, and importantly here, the planning status of the building of which it forms part, has not been formalised. Indeed, this will remain the case unless, and until, the

planning position is properly regularised for the building and its use for residential purposes.

Conclusion on the DPA and Conditions

32. For the above reasons, and having had regard to all matters raised, I conclude that the appeal should succeed, and planning permission is granted for the extension as built.
33. In turning to whether and, if so, which conditions should be imposed I have had regard to relevant advice within the government's planning practice guidance. However, first and foremost, the extent of the red line on both the plan attached to the enforcement notice, as originally issued, and the subsequent plan relating to the amended requirements, needs to be mentioned. In both cases the red line has been drawn tightly along the footprint of the whole building. As such no curtilage area has, or could be, identified.
34. The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 under Part 2, 4C specifies that notices shall also show the precise boundaries of the land to which it relates, whether by plan or otherwise. As I have accepted the Council's suggested amendments to the enforcement notice and the DPA relates only to the extension which the notice targets, and not the dwelling of which it forms part, the issue of whether the dwelling itself is in an isolated and unsustainable location is not relevant. Also, for the above reason, it is not possible to consider the suggested imposition of conditions relating to the submission of a site layout plan and landscaping scheme for subsequent written approval. Moreover, even if the red line had been drawn more widely, due to the resultant limitations of the development at appeal, I am not convinced that these said conditions would be either necessary or reasonable.
35. In terms of practicability and, moreover, being realistic there is little scope or necessity for additional window openings to be installed within the extension. Further, even if there was a likelihood of such, from my site visit observations I am not clear as to the actual harm, either visually or relating to the living conditions of any neighbouring occupiers, that would result. It seems to me that such a condition would represent control for control's sake.
36. I do, though, agree with the need for details as to foul and surface water drainage are needed for assessment, especially given that the planning position for Building B has yet to be formalised. Should the drainage details be approved then this would ensure a satisfactory standard of development in this regard. A condition offered by the appellant regarding a bat survey, although it might be desirable, is not necessary given that only the extension is at issue. Accordingly, in the consideration of whether planning permission should be granted here the decision would not turn on the imposition of such a condition.

The appeal on Ground (f)

37. Appeals on ground (f) are that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity.

38. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by seeking the removal of the extension. However, given my decision to allow the DPA it is not necessary for me to consider this matter further.

The appeal on Ground (g)

39. Appeals on ground (g) are that the stated time period for compliance falls short of what is reasonable in the circumstances. Again, in view of my decision to allow the appeal and grant planning permission this ground does not fall to be considered.

Summary of Decision

40. For the reasons given above the enforcement notice is corrected as set out in the Formal Decision and, subject to these corrections, the notice is quashed and planning permission is granted, subject also to the terms set out in the Formal Decision.

Timothy C King

INSPECTOR

APPEARANCES

For the Appellant

Simon Brett of Brett Incorporated Planning and Development Services

Robert Oram Appellant

Christine Holland Resident

For the Local Planning Authority

Reg Hawks Horsham District Council

Madeleine Hartley " " "

Other Interested Parties

Documents

1. Council's notification letters of appeal and the Hearing.